

Service Date: March 23, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF RANGE	)	UTILITY DIVISION
TELEPHONE COOPERATIVE, INC.,	)	
Application for Designation as an	)	DOCKET NO. D2004.3.38
Eligible Telecommunications Carrier	)	ORDER NO. 6705a

**FINAL ORDER**

**Introduction and Procedural Background**

On March 11, 2004, Range Telephone Cooperative, Inc. (RTC), filed with the Public Service Commission (PSC) a petition for designation as an eligible telecommunications carrier (ETC). The area for which designation is requested is the Forsyth, Montana, telephone exchange. Qwest Corporation (Qwest) is the incumbent local exchange carrier in the Forsyth exchange and is a designated ETC.

In its petition RTC lists all of the statutory criteria or requirements for designation as an ETC. RTC states that it meets these criteria. The criteria that RTC lists include that RTC must offer all nine of the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services. RTC asserts that it will use a combination of its own facilities and resale of Qwest's facilities to provide universal service in Forsyth. Additionally, ETCs must advertise the availability of such services using media of general distribution. RTC commits to advertise in a way that complies with this criterion. If designated an ETC, RTC would receive federal universal service fund (USF) support for qualifying services provided to customers in the Forsyth exchange.

In its petition, RTC provided some limited background on the company's history. First, RTC was established in 1953 and now serves 5,000 subscribers in six counties (11,723 square miles) by means of fiber optic cable (546 miles) and telephone lines (4,046 route miles). RTC is headquartered in Forsyth where it operates a switch. Thus, RTC already provides facilities-based

services in Forsyth. For customers who are not presently served through RTC's own facilities RTC will provide service by means of leasing or reselling Qwest's local services. As a designated ETC in its own service area, RTC asserts to be very familiar with the requirements that are placed on ETCs. RTC asserts to offer the residents of Forsyth advanced services such as CLASS/Custom Calling features, voice mail, and DSL high speed internet service.

On April 26, 2004, the PSC noticed RTC's application and established an intervention deadline. The PSC has granted intervention to Cable & Communications Corporation (CCC), Mid-Rivers Telephone Cooperative (MRTC), the Montana Consumer Counsel (MCC), and the Montana Telecommunications Association (MTA).

On September 27, 2005, RTC filed a Stipulation and Agreement. This filing states that MRTC, CCC, and MTA stipulate and agree to no objection to RTC's application as an ETC and that RTC's application should be granted consistent with certain of the PSC's ETC Rules.<sup>1</sup> On October 31, 2005, RTC filed testimony of Mr. Curtiss Fleming, the CEO/General Manager of RTC. On December 9, 2005, the MTPSC issued a Procedural Order (*PSC Order No. 6705*) allowing for discovery and contemplating an April 31, 2006, hearing date. Pursuant to this order, on December 28, 2005, PSC staff served its initial discovery upon RTC.<sup>2</sup> RTC responded to this initial discovery on January 20, 2006. Additional PSC discovery was also issued. On January 31, 2006, RTC's responses were received. On February 7, 2006, the MCC filed notice of its election to not file testimony. The MCC decision is based on its review of the record, including data responses. On February 27, 2006 the PSC released a Notice of Opportunity for Hearing, requesting a March 14, 2006 response date. No request for hearing was received.

#### RTC Testimony

Mr. Curtis Fleming, the CEO and General Manager of RTC, submitted prefiled testimony on October 31, 2005. He provided some additional information on RTC's history and service

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<sup>1</sup> ARM 38.5.3201 through 38.5.3230.

<sup>2</sup> The only discovery in this docket was issued by the PSC staff. Relevant responses to data requests are identified in footnotes.

area. RTC was incorporated in 1953 and has, since that time, established service in a dozen rural exchanges in eastern Montana. RTC has over 5,000 subscribers in 6-counties. In 2000 RTC began to offer long distance service. In 1982 RTC added digital switching and “single service,” that RTC defines as single party service. RTC has recently made satellite-based broadband service available everywhere within its service area. It also serves as an agent for Direct TV offerings.

Fleming explains that the purpose of his testimony is to describe how RTC meets the requirements established by the Telecommunications Act of 1996 (Act) to be designated an ETC.

Fleming explains that as a common carrier, RTC offers the services supported by the USF support mechanisms using its own facilities or a combination of its own facilities and those resold by another carrier.<sup>3</sup> In addition, RTC advertises the availability of its services.<sup>4</sup> Fleming explains that RTC seeks to be designated an ETC throughout the local exchange area of Forsyth in which it has overbuilt Qwest.<sup>5</sup> He also testifies that RTC would use USFs for the following purposes: 1)

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<sup>3</sup> RTC has an interconnection agreement with Qwest. RTC also has an interconnection agreement with Western Wireless that enables the two companies to exchange local and toll traffic. *DR PSC -004*. Calls that originate with RTC’s customers that are located in Forsyth and that terminate to a Western Wireless customer with an NPA/NXX assigned to the Forsyth exchange will be a local call, per the interconnection agreement, and not subject to long distance charges. *DR PSC -010*.

<sup>4</sup> Advertisements will appear in the Independent Press, the Hysham Echo, the Farm and Ranch Weekly. RTC filed no testimony on its provision of Lifeline and Link-Up services. RTC commits to advertise the availability of Lifeline and Link-up services and will make additional information available. The discounts that RTC will offer amount to \$13.50/month. Customers who qualify for Link-Up will receive up to a \$30 discount on the installation or relocation of access line service and they may defer payment up to \$200 of charges without interest for as long as one year. *DR PSC-001*. Although not addressed in testimony, RTC explained that it plans to offer toll-limitation information through advertisements; RTC will offer toll blocking which is a source of toll limitation. *DR PSC -003*.

<sup>5</sup> Fleming explained that RTC overbuilt Forsyth in 2001 and adds that RTC plans to construct facilities in the rural areas of the Forsyth exchange. The build out is expected to be completed in 2-3 years of receiving ETC designation. If Qwest were to relinquish service in Forsyth prior to completion of RTC’s build out, then RTC would serve customers with its own facilities in

to upgrade and improve services in its Montana service areas; 2) to increase wireline access in rural areas and to provide choice of providers; and, 3) to build-out and extend the offered services beyond the town of Forsyth.<sup>6</sup>

Fleming testifies on how RTC satisfies the requirements to be designated an ETC. Fleming explains that, in addition to being a common carrier, RTC will offer the services supported by the USF mechanisms. Those nine services include: access to voice-grade service,<sup>7</sup> access to free-of-charge local usage (defined as an amount of minutes of use of exchange service), dual tone multi-frequency (DTMF) signaling or its equivalent, single-party service, toll limitation for qualifying low-income consumers and access to emergency,<sup>8</sup> operator, interexchange and directory services. Fleming states that RTC will provide all nine supported services. Fleming

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combination with leased UNEs. *DR PSC -008*. RTC has no objection to reporting to the PSC the requests for service that it is unable to satisfy. RTC, however, believes that Qwest is the designated carrier of last resort (COLR) in Forsyth; RTC therefore perceives no COLR responsibility. *DR PSC-009*. While it perceives no COLR obligation, RTC commits to extend new lines to new RTC Link-Up customers consistent with applicable RTC policies and applicable Life Line/Link-Up regulations. *DR PSC -010*.

<sup>6</sup> RTC has 295 business and 567 residential lines in Forsyth. RTC does not currently resell Qwest service, nor does it lease any of Qwest's UNEs. *DR PSC -002*. RTC estimates that it currently serves about 60 percent of the access lines in Forsyth, a percentage it expects to increase significantly once RTC offers service in the rural areas of Forsyth. *DR PSC -010*.

<sup>7</sup> RTC explained that the relevant urban area rates, to the rates that it will charge, are the ones that Qwest charges in its Forsyth, Miles City and Colstrip exchanges. In this regard, RTC expects, however, that customers in Forsyth would use more toll services than urban customers located in Billings would use. He expects more usage because a far greater number of services are available in Billings than are available in Forsyth. *DR PSC -003*. Fleming explains that in order to satisfy the requirement to offer service with a minimum bandwidth of 300 to 3,000 hertz that RTC will use modern switching and non-loaded and loaded buried cable, copper plant and fiber optic loop carrier and wireless facilities. *DR PSC -006*.

<sup>8</sup> RTC currently provides Basic 911 service in Forsyth as Rosebud County is not fully prepared for E911. RTC can provide ANI when the county is prepared. *DR PSC -002*.

adds that it is in the public interest to designate RTC as an ETC because of customer choice and customers' stated dissatisfaction with either the lack of broadband access or poor service quality.<sup>9</sup>

### Findings of Fact

General The PSC finds that RTC has sufficiently satisfied the requirements set forth in § 214 of the Act, including the public interest standard, to be designated an ETC in the Forsyth exchange. RTC's ongoing compliance with the additional conditions set forth in this order is required. In this regard, the PSC's evaluation of RTC's compliance will, as is appropriate, be consistent with recent PSC orders designating ETCs and the PSC's rules governing ETCs (*ARM*

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<sup>9</sup> Fleming explained that it is in the public interest to designate RTC as an ETC in Forsyth because RTC is a local member owned Co-op. In addition, RTC offers services not otherwise available in Forsyth (e.g., voice mail, broadband, internet access to DSL) and RTC's services are less costly than Qwest's services. Although it objects to the question of what incremental benefits will accrue if yet an additional, to RTC, Qwest and Western Wireless), carrier was designated as an ETC in Forsyth, Fleming holds that public interest standards must be applied in a nondiscriminatory and competitively neutral fashion. *DR PSC -005*. Fleming adds that the rates that RTC will assess in Forsyth will be more affordable than Qwest's rates; RTC does not currently assess a SLC in Forsyth nor does it assess a separate EAS charge. *DR PSC -006 and -005*.

Fleming explains that RTC will provide broadband services via DSL technology but that it does not offer local measured service (LMS) in any of its plans; nor does RTC currently offer VoIP although it is testing VoIP products that may be offered. *DR PSC -007*. RTC emphasized that, although it offers EAS and that it can with the aid of Federal funds replace Qwest if Qwest relinquished its services in Forsyth, it has no plans to offer LMS. *DR PSC -011*. RTC asserted that it will seek Federal USFs from USAC for those lines for which voice service is provided by means of VoIP as USF support is based upon the services provided not the technology used. *DR PSC -011*. RTC is exploring the possibility of using point-to-multipoint wireless product to provide the nine supported services. *DR PSC -012*.

RTC initially held that the support that RTC may receive will not impact the amount of USF support that Qwest receives. *DR PSC DR -008*. In response to PSC -014, however, RTC clarified that if RTC captured a lifeline customer previously served by Qwest, that Qwest would no longer be reimbursed by USAC for the amount that Qwest had discounted.

RTC has no objection to reporting customer complaint information to the MTPSC. Nor does RTC believe that there are any rules in the range of ARM 38.5.3201 through 38.5.3230 with which it would not comply. *DR PSC -009*.

38.5.3201 through 38.5.3230). There is, however, the potential for unique aspects with each ETC petition, aspects that may require unique PSC findings.

Public Interest In order for a designation to be in the public interest the PSC must thoroughly review whether RTC complied with both the requirements set forth in § 214 of the Act and with any additional requirements that the PSC has established either in its rules, previous orders, or this order. The PSC has authority to establish such requirements and it has chosen to exercise that authority. In this order, the PSC will consider the standards that were in the PSC's final order approving the Cable & Communications Corporation (CCC, d/b/a Mid-Rivers Cellular) ETC petition (*PSC Docket No. D2003.8.105, Order No.6518a, April 7, 2005*). The Federal Communications Commission's (FCC) recent March 17, 2005, Report and Order (*FCC 05-46, CC 96-45*) adopted mandatory minimum requirements for ETC designations that are subject to § 214(e)(6) proceedings. These requirements are, however, optional recommendations that the FCC urged states to adopt. Many of the PSC's ETC rule requirements are within the FCC's recent minimum requirements.

Aside from satisfying the minimal § 214 requirements, RTC's filing was not very robust in terms of why its designation as an ETC would be in the public interest. RTC's witness Fleming explained that it is in the public interest to designate RTC as an ETC in Forsyth because RTC is a local member-owned cooperative.

Besides satisfying the minimal requirements in § 214, it appears to the PSC that there is another public interest benefit given there are now two suppliers of landline service in Forsyth. RTC has captured a majority of Forsyth's customers and intends to expand upon that market share. While a duopoly structure is not a competitive market, if there were benefits from such an outcome, they may be manifest, in part, in better service quality and lower prices. RTC has asserted that it has gained customers because of the poor service quality that is otherwise available in Forsyth. Fleming adds that the rates that RTC will assess in Forsyth will be more affordable than the incumbent's (Qwest's) rates. The PSC finds that the advent of improved service quality is a valid public interest consideration, a result that was achieved without having to

offer higher prices than the incumbent.

Designated Study Areas and Service Coverage

As RTC has the means to serve customers in Forsyth, either on a facility basis, by means of unbundled network elements (UNEs) or via resell, there appears no apparent concern about RTC's ability to serve any or all lines in the Forsyth exchange. Therefore, RTC need not initially serve all customers by its own means in the entire Forsyth wire center. If RTC were to change the means by which it intends to serve customers to, for example, internet telephony, and in turn seek USFs for that service, then RTC must first advise the PSC of such intent. In any case, RTC intends with the aid of USF support to expand to serve all lines in the Forsyth exchange within 2 to 3 years. The Commission finds this to be a reasonable goal.

RTC has become the dominant carrier in the land line telecommunications market in Forsyth. The PSC finds that RTC must by means of its own resources serve all reasonable requests for wireline service at residences and businesses in each wire center. RTC may choose the means by which it fulfills this obligation but it shall be, in the first instance, RTC's responsibility.

Build out Plans RTC's build out plans, as noted above, are reasonable and mitigate against any appearance of cream skimming. The PSC requires RTC to file information that explains its build out plans. An initial report of those plans must be filed within 60 days of the issuance of this Final Order. At 6 month intervals RTC is to file reports on its progress in expanding its coverage.

§ 214(e)(1) supported Services: Voice Grade Access One of the nine supported services requires ETCs to provide voice grade access including at least 300 to 3,000 Hertz bandwidth (*FCC rule, 47 C.F.R. 54.101(a)(1)*). The PSC expects, as required by the FCC's rules, that

RTC's service at least spans the 300 to 3000 Hertz bandwidth and that the service quality for transmission will be at least -104dBm.<sup>10</sup>

Use of Federal Universal Service Funds Although the PSC does not otherwise regulate RTC, how RTC uses USFs is controlled by statute, principally §254(e). The annual certification process involves the PSC in fund-usage matters, as will any PSC investigation into how such funds are used.<sup>11</sup> Whereas the PSC has relied on a self-certification mechanism, if and when this approach appears inadequate for a specific carrier, the PSC will then consider a more in depth review.

Fund Size The PSC is concerned about the size of the USF. The FCC has also expressed heightened concern about the size and growth of the Federal USF.<sup>12</sup> There is a real risk that if the USF size continues along its recent growth path, legislation could be enacted to limit the fund's size. Any such legislation could damage the ability of carriers to operate, maintain, and expand networks that serve to achieve the universal service principles set forth in §254(b). Because

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<sup>10</sup> RTC appears to satisfy the bandwidth requirement by use of a modern, digital switching system combined with non-loaded and loaded buried copper plant. RTC plans to use a combination of loaded copper plant, fiber optic fed digital loop carrier, and wireless facilities to provide services that will meet the FCC's service criteria. *DR PSC -007*.

<sup>11</sup> *ARM 38.5.3216*. Also, § 254(e) of the Telecommunications Act of 1996 states, in relevant part: "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section."

<sup>12</sup> In its Virginia Cellular Order (*FCC 03-338, CC Docket No. 96-45, Released January 22, 2004*) the FCC asserted: "Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future." (paragraph 31, emphasis added).

RTC's service offerings are most surely substitutes for, and not complements to, the legacy incumbent's services, there should be a negligible impact on the USF. RTC, as a competitive ETC, not an incumbent, will receive support based on the FCC's high cost estimates for the incumbent, not upon the costs that RTC incurs for its own study area.

Service Quality Monitoring The PSC will monitor RTC's ability to provide service. RTC must report to the PSC the requests for service that it is unable to satisfy. RTC must report the number of unsatisfied requests regardless of how those requests were communicated (*e.g.*, voice, email, letter, etc.). The PSC requires that these reports detail the unsatisfied service requests by location in Forsyth and the reports must provide a detailed description of why customer requests for service could not be satisfied. RTC must file such reports on a quarterly basis for as long as RTC is designated an ETC. RTC must also document and report to the PSC on the customer complaints that it receives. For the Forsyth study area for which RTC is designated an ETC RTC must record the complaints that it received from customers, identify the nature of the complaint (*e.g.*, poor transmission, dropped calls, busy signals), and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses. If repeat complaints are received, then a record of such repeat complaints must be maintained. The reports must be supplied to the PSC on a quarterly basis.

Federal Universal Service Fund Receipts The PSC finds that, in conjunction with being designated as an ETC, RTC must report to the PSC the USFs, including any Lifeline, Enhanced Lifeline, and Link Up funds, that it receives. The reports must also disaggregate the amount of other portable support that RTC receives (*i.e.*, high cost loop, local switching, etc.). The reports must be filed quarterly. Prior to RTC's seeking USF support for customers served by means of other than cellular or PCS technology (*e.g.*, VoIP), RTC must file with the PSC a statement of such intent.<sup>13</sup> If RTC uses wireless technology to serve customers, as it indicates it might, then it

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<sup>13</sup> RTC asserted that it will seek Federal funds from USAC for those lines for which voice service is provided by means of VoIP as USF support is based upon the services provided not the

must advise the PSC of such service and explain why and how the provision of such service also satisfies the requirements that are established and discussed in this order.

Service Package As long as RTC is designated an ETC it must have on file with the PSC a copy of each rate plan that it offers for which it may receive USF support. Each plan must include the rates, terms, and conditions of service.

#### Conclusions of Law

The PSC has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. *47 U.S.C. § 214(e)(2); § 69-8-840, MCA*. The PSC has considered all laws, federal and state, applicable to state-designation of ETCs for receipt of federal USFs. The PSC determines that RTC has met the legal requirements for designation.

#### **ORDER**

It is hereby ordered that Range Telephone Cooperative, Inc.'s application for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions included in this order.

Done and dated this 21st day of March, 2006, by a vote of 5 - 0.

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technology used. *DR PSC -011*. RTC is exploring the possibility of using point-to-multipoint wireless product to provide the nine supported services. *DR PSC -012*.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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BRAD MOLNAR, Vice-Chairman

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DOUG MOOD, Commissioner

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ROBERT H. RANEY, Commissioner

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THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.